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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

12 **JOHN H. SYKES,**

13 **Plaintiff,**

14 **v.**

15 **ROSADIA D. ESCUETA, PAUL THORNTON,**  
16 **CHONG A. IM, INDIVIDUALLY AND AS**  
17 **TRUSTEE OF THE CHONG A. IM TRUST**  
18 **DATED 9/21/07, KEVIN IM AND JACKIE IM,**

19 **Defendants.**

20 **ROSADIA D. ESCUETA, PAUL THORNTON,**  
21 **CHONG A. IM, INDIVIDUALLY AND AS**  
22 **TRUSTEE OF THE CHONG A. IM TRUST**  
23 **DATED 9/21/07, KEVIN IM AND JACKIE IM,**

24 **Counterclaimants,**

25 **v.**

26 **JOHN H. SYKES,**

27 **Counterdefendant.**

**Case No. 3:10-CV-03858-SC**

**STIPULATION AND [PROPOSED] ORDER  
FOR CONTINUED HEARING DATE ON  
COUNTERDEFENDANT JOHN SYKES  
12(b)(6) MOTION AND CONTINUATION OF  
INITIAL CASE MANAGEMENT  
CONFERENCE**

**Judge: Hon. Samuel Conti**

**Date Complaint Filed: August 27, 2010**

1 Defendants and Counterclaimants Rosadia D. Escueta, Paul Thornton, Chong A. Im,  
2 Individually and as Trustee of the Chong A. Im Trust dated 9/21/07, Kevin Im and Jackie Im  
3 (hereinafter collectively referred to as "COUNTERCLAIMANTS"), by and through their respective  
4 counsel of record, Jeffrey A. Feldman and Thomas H. Porter of the Law Offices of Jeffrey A.  
5 Feldman, and the Plaintiff and Counterdefendant John H. Sykes ("COUNTERDEFENDANT"), by  
6 and through his counsel of record, Chad R. Fuller, hereby enter into this stipulation  
7 ("STIPULATION") with regard to the following facts:

8 A. COUNTERDEFENDANT has filed a motion pursuant to Federal Rule of Civil  
9 Procedure 12(b)(6) with respect to the COUNTERCLAIMANTS' Counterclaim, which was filed by  
10 the COUNTERCLAIMANTS on January 7, 2011. The 12(b)(6) motion is scheduled to be heard by  
11 the Court on March 18, 2011, at 10:00 a.m.

12 B. Also on March 18, 2011 at 10:00 a.m., the Initial Case Management Conference in  
13 this matter is scheduled. Likewise, per the Court's order setting the Initial Case Management  
14 Conference and ADR deadlines, the last day for the parties to file a Rule 26(f) report, complete  
15 initial disclosures, or state objection in Rule 26(f) report and file a case management statement, is  
16 March 11, 2011.

17 C. COUNTERCLAIMANTS have reached a preliminary settlement with the insurance  
18 company of a brokerage firm, GunnAllen Financial, Inc. ("GunnAllen"), which insurance ostensibly  
19 also covers COUNTERDEFENDANT. Defendant GunnAllen is currently in a Chapter 11  
20 bankruptcy proceeding in the United States Bankruptcy Court, Middle District of Florida, Tampa  
21 Division, Case No. 8:10-bk-09635-MGW, and the settlement will need to be approved by the  
22 bankruptcy Judge; a hearing has been set for March 28, 2011. If approved by the Bankruptcy Court,  
23 which the parties expect to happen, the dispute between the COUNTERCLAIMANTS and the  
24 COUNTERDEFENDANT in this action would be resolved as well. In order to give the  
25 COUNTERCLAIMANTS and GunnAllen's insurance carrier time to have the Bankruptcy Court  
26 approve their settlement, and avoid wasting the parties' and the Court's time and resources in this  
27 matter, the parties herein have stipulated to move both COUNTERDEFENDANT's 12(b)(6) motion  
28 with respect to the Counterclaim, the Initial Case Management Conference, and the associated

deadlines with that conference, to a hearing date in early May, thereby allowing the parties time to effectuate that settlement and dismiss this matter. The reason for the early May hearing date is that the settlement hearing in the GunnAllen Bankruptcy Court is currently on calendar for March 28, and the parties would need at least 35 days from the date of that hearing to continue the hearings in this case, in case the Bankruptcy Court does not approve the settlement and COUNTERCLAIMANTS are required to file an opposition to the 12(b)(6) motion.

NOW THEREFORE, IT IS HEREBY STIPULATED by and between COUNTERCLAIMANTS Rosadia D. Escueta, Paul Thornton, Chong A. Im (individually, and as Trustee of the Chong A. Im Trust dated 9/21/07), Kevin Im and Jackie Im, and COUNTERDEFENDANT John H. Sykes, that subject to the Court's approval:

a. The Initial Case Management Conference will be held on May 13, 2011, in Courtroom 1, 17<sup>th</sup> Floor, San Francisco at 10 a.m., and those other deadlines, as set forth in the Court's Order Setting Initial Case Management Conference and ADR Deadlines, are continued accordingly,

b. COUNTERDEFENDANT John H. Sykes' Motion to Dismiss the Counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6) will be held on May 13, 2011, in Courtroom 1, 17<sup>th</sup> Floor, San Francisco at 10 a.m.

DATED: February 25, 2011

LAW OFFICES OF JEFFREY A. FELDMAN

By /S/ Jeffrey A. Feldman  
 Jeffrey A. Feldman  
 Attorneys for Counterclaimants  
 Rosadia D. Escueta, Paul Thornton, Chong A.  
 Im (individually, and as trustee of the Chong A.  
 Im Trust dtd. 9/21/07), Kevin Im, and Jackie Im

DATED: February 25, 2011, 2011

FOLEY & LARDNER LLP



By /S/ Chad R. Fuller  
 Chad R. Fuller  
 Attorneys for Counterdefendant  
 John H. Sykes

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

2  
3  
4 Dated: \_\_\_\_\_, 2011

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Hon. Samuel Conti, Judge  
United States District Court